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COURT OF APPEAL, FOURTH APPELLATE DISTRICT

DIVISION ONE

STATE OF CALIFORNIA

In re Jimmy P., a Person Coming Under the  
Juvenile Court Law.

THE PEOPLE,

Plaintiff and Respondent,

v.

Jimmy P.,

Defendant and Appellant.

D054273

(Super. Ct. No. J219653)

APPEAL from a judgment of the Superior Court of San Diego County, Amalia L. Meza and Carolyn M. Caietti, Judges. Affirmed.

The juvenile court adjudged Jimmy P. a ward of the court after finding he aided and abetted the burglary of a locked vehicle, in violation of Penal Code<sup>1</sup> section 459. At disposition, the court noted the maximum term of confinement was one year, and placed Jimmy on probation in the custody of his father. Jimmy challenges the sufficiency of the

<sup>1</sup> All further statutory references are to the Penal Code unless otherwise specified.

evidence to support a finding he was present at the burglary or, alternatively, that he aided and abetted the perpetrator. We affirm the judgment.

### FACTUAL BACKGROUND

This case arises from the burglary of a locked car parked at a local high school. Margarita Ortiz, an employee of the school, arrived at work about 10:30 a.m. and witnessed four or five students standing in a group near the car. Ortiz saw the students talking and laughing, but then heard a banging sound as if the car was being hit with something. She walked away from the students and toward the entrance of the school. Turning, she saw one student hitting the driver's side door of the car with an object while the others stood about two feet from each other, laughing. School was in session and it was about fourth period. She saw no other students in the parking lot.

Ortiz immediately walked toward the school where she found Martha Thomas, a school security officer. Thomas was located at the front gate of the school. Ortiz pointed straight toward the parking lot where the car was being vandalized. As she was telling Thomas what was happening, Ortiz turned to look back and saw the car's driver's side door was open and "The kids were still there." Five minutes lapsed between the time she parked and the time she met Thomas at the gate. Thomas began walking toward the car, and about 56 feet away from it she saw two students at the vehicle. One was leaning into the car through the open driver's side door while the other stood with his hand on the door. Thomas recognized the students as Jimmy and his friend Marcel P. Thomas yelled, "What are you guys doing in there," and the two students walked away from the

car. One of the students pulled the hood of his jacket over his face. Thomas did not see either of them break the window, throw anything at the car, or take anything from the car.

Thomas reported the incident to police officer Jarvis Gresham. Gresham inspected the car and found glass strewn outside the driver's side of the car and throughout the interior. The contents of the glove box were scattered inside the car.

Gresham spoke with Jimmy minutes later and searched him. Jimmy told Gresham that he was near the car but had not broken into it and did not know the students responsible for the break-in.

## DISCUSSION

Jimmy challenges the sufficiency of the evidence to support his conviction. Specifically, he asserts the evidence was insufficient to support a finding he was present at the burglary or, even if he was present, there was no evidence he aided and abetted the perpetrator.

When a defendant challenges the sufficiency of the evidence on appeal, the appellate court must "review the whole record in the light most favorable to the judgment below to determine whether it discloses substantial evidence—that is, evidence that is reasonable, credible, and of solid value—from which a reasonable trier of fact could find the defendant guilty beyond a reasonable doubt. [Citations.]" (*People v. Thomas* (1992) 2 Cal.4th 489, 514.) "Circumstantial evidence may be sufficient to connect a defendant with the crime and to prove his guilt beyond a reasonable doubt." (*People v. Pierce* (1979) 24 Cal.3d 199, 210.) In cases in which the prosecution relies primarily on circumstantial evidence, the standard of review is the same. (*People v. Thomas, supra*, 2

Cal.4th at p. 514.) The standard applies in juvenile cases as well as adult criminal proceedings. (*In re Roderick P.* (1972) 7 Cal.3d 801, 809.) Reversal on the ground of insufficient evidence is unwarranted unless it appears that under no hypothesis whatsoever is there sufficient substantial evidence to support the conviction. (*People v. Bolin* (1998) 18 Cal.4th 297, 331.)

" 'Although it is the duty of the [trier of fact] to acquit a defendant if it finds that circumstantial evidence is susceptible of two interpretations, one of which suggests guilt and the other innocence [citations], it is the [trier of fact], not the appellate court[,] which must be convinced of the defendant's guilt beyond a reasonable doubt.' " (*People v. Thomas, supra*, 2 Cal.4th at p. 514.) Despite any circumstances that " ' "reasonably justify the trier of fact's findings," ' " a reversal by the appellate court is unwarranted because the circumstances " ' "might also be reasonably reconciled with a contrary finding . . . ." ' [Citations.]" (*People v. Bean* (1988) 46 Cal.3d 919, 933; *People v. Rodriguez* (1999) 20 Cal.4th 1, 11.)

Initially, Jimmy contends the prosecution did not prove beyond a reasonable doubt that he was present at the burglary. We disagree.

Here, conviction of burglary of a vehicle requires the prosecution to prove that the defendant entered a locked vehicle with the intent to commit larceny or a felony. (§ 459.) Burglary may be proven by circumstantial evidence and does not require witnesses to have seen the defendant in the act of committing the break-in. (*People v. Hinson* (1969) 269 Cal.App.2d 573, 577.)

As we have noted, here the evidence showed that Ortiz saw four or five youths standing by a car and laughing as one began to hit the car with an object. Ortiz immediately walked to the security guard. As she spoke with the guard, Ortiz could see the group of youths was still at the car. After being alerted to the incident, the security guard began walking directly to the vehicle and when she was about 56 feet away, saw two youths by the car. The driver's side window had been broken and one youth rested his hand on the open driver's side door while the other leaned inside. Thomas recognized one of these two youths as Jimmy, who left the scene once confronted by Thomas.

We note in particular that there was no substantial break in time between Ortiz's arrival in the parking lot and her report to the security guard. The total time was about five minutes. Moreover, there was virtually no break in time between Ortiz's report and the security guard's confrontation with Jimmy. As Ortiz reported what she had just seen, she turned around and the group of youths was still at the car. The security guard immediately walked to the car in a direct path from where she and Ortiz stood. At about 56 feet, a relatively short distance, the guard saw Jimmy at the car.

From this evidence, a rational trier of fact could conclude that Jimmy was one of the four or five youths not only present at, but responsible for, the burglary of the car. In particular, we note that Jimmy's prompt departure from the scene after being confronted by Thomas reflected a consciousness of guilt. (See *People v. Viscotti* (1992) 2 Cal.4th 1, 60 [defendant's flight may reflect consciousness of guilt].) In addition, Jimmy's and his companion's physical contact with and partial intrusion into the car was more consistent with participation in the burglary than with any innocent conduct. Thus, when viewed in

the light most favorable to the prosecution, this circumstantial evidence supports a finding Jimmy was part of the group that burglarized the car.

Alternatively, Jimmy contends that even if the evidence was sufficient to prove his presence at the break-in, it was insufficient to prove he aided and abetted the perpetrator. Specifically, he asserts the evidence was insufficient to prove (1) he had the requisite intent to facilitate or encourage the commission of the crime or (2) he committed an affirmative act that aided and abetted the perpetrator.

To prove a defendant aided and abetted a crime, the prosecution must prove: (1) the perpetrator committed the crime; (2) the defendant knew before or during the commission of the crime that the perpetrator intended to commit the crime; (3) the defendant intended to aid and abet the perpetrator's commission of the crime; and (4) the defendant's words or actions did actually aid and abet the perpetrator. (CALCRIM No. 401.) Factors to consider in determining aider and abettor liability include presence at the scene of the crime, failure to take steps to prevent the crime, companionship, flight, and conduct before and after the crime. (*People v. Jones* (1980) 108 Cal.App.3d 9, 15.) Direct evidence of intent is commonly unavailable because it often relies on the defendant's testimony, necessitating circumstantial evidence to prove this element. (*People v. Beeman* (1984) 35 Cal.3d 547, 558.)

Here, the evidence strongly supported the inference Jimmy was present in the group that included the perpetrator, stood laughing as the burglary commenced, and later either leaned on or into the car. The combination of Jimmy's presence in the group, his leaning on the open driver's side door or into the car, and his departure from the scene

when confronted, permitted the trial court to conclude Jimmy aided and abetted the crime by providing encouragement and assistance to the actual perpetrator of the break-in. In particular, the combination of circumstances permitted the trial court to conclude Jimmy knew a crime was being committed and was present to encourage the actual perpetrator. Thus, when viewed in the light most favorable to the prosecution, the evidence is sufficient for a rational trier of fact to find Jimmy aided and abetted the burglary.

Finally, Jimmy asserts the evidence is insufficient to prove that he was the perpetrator of the crime. However, Jimmy was found liable not as the perpetrator but as an aider and abettor. Thus, we need not address this argument.

#### DISPOSITION

The judgment is affirmed.

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BENKE, Acting P. J.

WE CONCUR:

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HALLER, J.

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IRION, J.